

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA**

JOHN JOHNSON,

Plaintiff,

vs.

OLD REPUBLIC INSURANCE  
COMPANY,

Defendants.

Case No.10-CV-460-JHP-FHM

**OPINION AND ORDER**

This Opinion and Order resolves the discovery disputes presented in docket numbers 18, 19, 27, and 55. The matters have been fully briefed and a hearing was held before the undersigned United States Magistrate Judge on June 20, 2012. At the hearing counsel for the parties agreed that the court's decision on appropriate redactions from documents submitted for *in camera* review will resolve the pending discovery matters.

The court has reviewed the documents submitted *in camera* and has made decisions about what information must be produced and what may remain redacted. In making these decisions, the court was guided by the following principles.

**Attorney Client/Work Product**

In a bad faith case Plaintiff is entitled to discover the insurance company's handling and analysis of his claim. This discovery includes:

- all facts the insurance company considered in its analysis, even if those facts were provided to the insurance company by the insurance company's attorney;
- the insurance company's analysis of the facts;
- the insurance company's understanding of its legal obligations to the insured;

–the conclusions reached by the insurance company based on its analysis of the facts and its legal obligations.

See generally, *Darzenkiewicz v. Jackson*, 904 P.2d 66 (Okla. 1994)(writ of mandamus issued to permit discovery of claims file and claims manual in UM bad faith case); *Buzzard v. McDaniel*, 736 P.2d 157, 159 (Okla. 1987)(insurer’s actions in bad faith case are assessed in light of all facts known and knowable concerning the claim at the time insurer was requested to perform contractual duties).

It is appropriate, on the basis of the attorney-client privilege or work product protection, to shield from discovery the insurance company’s communications seeking or obtaining legal advice from its attorney including the attorney’s analysis of the claim. However, the insurance company must disclose its own analysis of the claim. In other words, the insurance company is entitled to seek and obtain legal advice from its attorney, but that does not relieve the insurance company of either its obligation to make its own analysis of the claim or its obligation to disclose that analysis.

The foregoing applies to all discovery of Defendant insurance company in this case.

### **Personal or Confidential Information of Non-Parties**

The *in camera* documents include information that appears to have been generated by a name search for Plaintiff’s name, “John Johnson,” which returned information that matched claims for either John or Johnson. [ESIS 0263-0266, 0269-0272, 0278-0281]. The last names, addresses, date of birth, and telephone numbers were redacted for people other than Plaintiff. The *in camera* documents also include a summary of claims that involve claimants other than Plaintiff. [ESIS 0454-0459]. The redactions from this

document are information that involves unrelated cases. These redactions were appropriate.

### **Proprietary Information**

Dollar amounts were redacted from policy premiums, reserve amounts, estimated losses and expenses. This information is not subject to a privilege. These redactions were not appropriate.

### **Specific Redactions**

The following chart sets forth the court's order as to what must be produced and what may remain redacted.

<b>Page Number</b>	<b>Material Defendant is Required to Produce</b>
Old Republic 0004	Produce entire page.
Old Republic 0124	Produce entire page.
Old Republic 0155	No further production required.
Old Republic 0154	No further production required.
ESIS 0031	Produce entire page.
ESIS 0032	Produce entire page. (the document produced <i>in camera</i> contains redactions of premium amounts)
ESIS 0055	Produce entire page.
ESIS 0263-0266	No further production required.
ESIS 0269-0272	No further production required.
ESIS 0278-0281	No further production required.
ESIS 0291-0292	Produce entire page.
ESIS 0315	Produce entire page.
ESIS 0355-0356	Produce entire page.
ESIS 0378	Produce entire page.

ESIS 0443	Produce entire page.
ESIS 0454-0459	On page 0455, produce redacted portion of entry related to John Johnson, no other production is required for these pages.
ESIS 0464	The redaction covers two sentences. The first sentence may remain redacted. The second sentence must be produced.
ESIS 0463	The figures related to Defendant's legal costs and Defendant's estimated legal costs may remain redacted. The rest of the document must be produced.
ESIS 0521	One sentence of this page may remain redacted. The first sentence after the heading, "Strategy/Litigation Mgmt/Case Disposition may remain redacted. The rest of the document must be produced.
ESIS 0522	One sentence of this page may remain redacted. The first sentence after the heading, "Strategy/Litigation Mgmt/Case Disposition may remain redacted. The rest of the document must be produced.
ESIS 0523	One sentence of this page may remain redacted. The first sentence after the heading, "Strategy/Litigation Mgmt/Case Disposition may remain redacted. The rest of the document must be produced.
ESIS 0524	Produce entire page.
ESIS 0525	The first redacted paragraph/block on this page must be produced. The rest of the page may remain redacted.
ESIS 0526	The first redacted paragraph/block on this page must be produced. The rest of the page may remain redacted.
ESIS 0527	In the first redacted paragraph/block, the first two sentences must be produced, the rest of the paragraph/block may remain redacted.  The second redacted paragraph/block may remain redacted.  The third redacted paragraph/block must be produced.
ESIS 0528	No further production required.
ESIS 0529	Produce entire page.
ESIS 0530	No further production required.

ESIS 0531	Produce entire page.
ESIS 0534-0536	No further production required.
ESIS 0537	<p>The first redacted paragraph/block may remain redacted.</p> <p>In the second redacted paragraph/block, the first two sentences may remain redacted. The remaining two sentences must be produced.</p> <p>In the third redacted paragraph/block, the first sentence and part of the second sentence must be produced—the redaction may begin after the word “done.” The last two sentences of that paragraph/block must be produced, beginning with the word “we,” and continuing to the end of the paragraph/block.</p>
ESIS 0538	<p>In the section marked “reserve rationale,” the portion between the word “information and the word “at” may be redacted. The remainder of the page must be produced.</p>
ESIS 0539	No further production required.
ESIS 0540	<p>This page contains four paragraph/blocks.</p> <p>All of the information in the first paragraph/block on the page must be produced.</p> <p>No further production is required for the second and third paragraph/blocks.</p> <p>All of the information in the fourth paragraph/block must be produced.</p>
ESIS 0541	<p>In the first redacted paragraph/block, the first 12 lines of the paragraph/block may remain redacted. The remainder of the paragraph/block must be produced, beginning with the phrase, “at this time.”</p> <p>The remainder of the page must be produced.</p>
ESIS 0542	<p>The first redacted paragraph/block must be produced.</p> <p>No further production is required for the rest of the page.</p>
ESIS 0543	No further production required.

ESIS 0544	Produce entire page.
-----------	----------------------

**Conclusion**

Docket numbers 18, 19, 27, and 55 are GRANTED in PART and DENIED in PART as provided herein. The parties are to bear their own costs for these motions.

SO ORDERED this 21st day of June, 2012.

  
FRANK H. McCARTHY  
UNITED STATES MAGISTRATE JUDGE